Supreme Court, U.S.
FILED
JAN 22 1991
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 90-1116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LAWRENCE S. KRAIN,

Petitioner,

v.

RONALD GEORGE, LAUGHLIN WATERS, GEORGE DEUKMEJIAN, RALPH GEFFEN, JOHN G. DAVIES,

and

UNIVERSITY OF MICHIGAN HOSPITALS, DAVID KUHL, M.D., DAVID EAGLESON, ROBERT STONE, CONSUELO MARSHALL, MATTHEW BYRNE, TERRY HATTER, UNITED STATES GOVERNMENT, FREDI JACKSON, MICHELLE WITTE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

SUPPLEMENTAL APPENDIX
U.S. Supreme Court (12.2 Case)

LAWRENCE S. KRAIN, M.D.
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Pro Se

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and

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SUPPLEMENTAL APPENDIX
U.S. Supreme Court (12.2 Case)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

LAWRENCE S. KRAIN, M.D.

v. Case Number: 90 C 972

UNIVERSITY OF MICHIGAN HOSPITAL, et al.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion of defendants University of Michigan Hospital and David Kuhl, M.D. to dismiss is granted on the grounds that the court lacks subject matter jurisdiction.

The complaint is dismissed without prejudice to plaintiff, Lawrence S. Krain, M.D., filing the complaint in the appropriate state court.

Date: JULY 10, 1990

H. STUART CUNNINGHAM
Clerk

/s/ Theresa B. Kinney
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 972 Date: July 10, 1990

Name of Assigned Judge: PLUNKETT

Case Title: Lawrence S. Krain, M.D. vs.
University of Michigan Hospital

* * * * *

DOCKET ENTRY:

(1) ☒ Judgment is entered as follows:

(2) ☐ [Other docket entry:]

ENTER MEMORANDUM OPINION AND ORDER: the Hospital and David Kuhl, M.D.'s motion to dismiss is granted on the grounds that this court lack subject matter jurisdiction. The complaint is dismissed without prejudice to Krain filing the complaint in the appropriate state court. Status hearing and ruling date of July 31, 1990 is stricken.

* * * * *

(12) ☒ (For further detail see

☐ order on the reverse of

☒ order attached to
the original minute order form.)

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE S. KRAIN, M.D.,

Plaintiff,

v.

UNIVERSITY OF MICHIGAN HOSPITAL,
a Michigan corporation; et al.,

Defendants.

No. 90 C 972
Hon. Paul E. Plunkett

MEMORANDUM OPINION AND ORDER

Plaintiff Lawrence S. Krain, M.D. ("Krain") has filed a five-count complaint against twelve defendants, who include the University of Michigan Hospital ("Hospital"), two physicians, several alleged federal agents, a California Supreme Court justice, three federal judges, a federal magistrate, and the United States government. Count I alleges violation of Krain's civil and constitutional rights. Count II alleges a pendent state law action for intentional infliction of emotional distress, and Count IV for civil fraud and misrepresentation. In Count III of his complaint, Krain has sued the Hospital and physicians for medical malpractice. Before this court today is the Hospital and David Kuhl, M.D.'s motion to dismiss Krain's complaint. For the following reasons, we grant defendants' motion on the grounds that we lack subject matter jurisdiction.

Allegations

In Count I of his twenty-nine page complaint, plaintiff Lawrence S. Krain, M.D. has sued all defendants for violation of his civil rights under 42 U.S.C. §§ 1981, 1983, 1985, 2000 *et seq.* In the same count he alleges violation of his rights under the Fourth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments of the United States Constitution.

Krain contends that David Eagleson, Justice of the California Supreme Court, Robert Stone, a Los Angeles District Court Magistrate, and Judges Consuelo Marshall, Matthew Byrne and Terry Hatter of the United States District Court in Los Angeles, "sought to block Krain from suing in the state and federal courts in California due to rampant anti-Semitic prejudice . . . ." Complaint, ¶ 16. The judges further "failed to disqualify themselves, despite anti-Semitic bias, failed to allow prosecution of the Nazi skinheads who burned and defaced Krain's Temple Beth Tikvah . . ., selectively printed cases in federal law books involving Jews and failed to include captioned Catholic or Republican defendants . . . ." Complaint, ¶¶ 20, 21.

Krain states in his complaint that defendant Albert Baskind ("Baskind") "is the name of one of the four quadruplets who interchanged themselves . . . and were agents of defendant United States of America." Complaint, ¶ 13. Baskind allegedly acted with the other defendants to "shorten plaintiff's lifespan." Complaint, ¶ 14. Krain further contends that defendants Michelle Witte and Fredi Jackson, his former legal secretaries, are agents of defendant United States government, who acted with "state agent Eagleson and other co-defendant Federal agents" by, *inter alia*, garbling Krain's pleadings to make him look ill, harassing him with taped recorded phone calls at odd hours," losing file documents and inserting things Krain did not say in his declaration. Complaint, ¶ 17.

Krain also alleges that officials of the U.S. Departments of Justice and Treasury have stated that the five "judicial" defendants paid off and/or were under investigation for receiving money from organized crime figures, including Tony Accardo. "They were paid to help along negative findings for Krain because Krain was due a large inheritance which under terms of a trust would not be given to him until approximately age 50 years and which, if Krain were found mentally incompetent, would go to relatives of the crime syndicate and/or Yasmin Khan." Complaint, ¶ 23.

Krain further alleges that Herman Forman, M.D., "posed as a licensed medical doctor, who ordered a positron emission scan (P.E.T.) of plaintiff's brain without plaintiff's informed consent . . . ." Complaint, ¶ 9. Krain subsequently underwent the scan, which was performed by defendant Dr. David Kuhl at the University of Michigan Hospital. Krain alleges that during the test he was administered twice the prescribed dose of 18F-2 deoxygucose, thus shortening his life span. Krain contends that the medical defendants acted with the United States government in administering this toxic dose of radiation.

In Count II, Krain has sued all defendants for intentional infliction of emotional distress, and in Count IV for civil fraud and misrepresentation. In Count III, Krain has sued University of Michigan Hospital, Herman Forman, M.D. ("Forman") and David Kuhl, M.D. ("Kuhl") for medical malpractice, alleging that Forman and Kuhl are federal agents and/or non-physicians who deliberately gave Krain medication to aggravate and stress him.

In addition to damages in excess of one million dollars, Krain seeks in Count V to enjoin all defendants from further harassing him and "intentionally discriminating against

him in illegal Federal and State Court rulings and psychiatric proceedings because he is a born Jew and Democrat." Complaint, ¶ 26.

Discussion

As in all motions to dismiss, the allegations of the complaint are taken as true along with reasonable inferences to be drawn from them in the light most favorable to the plaintiff. *Powe v. City of Chicago*, 664 F.2d 639, 642 (7th Cir. 1981). Defendants University of Michigan Medical Center and David Kuhl, M.D. have moved to dismiss Krain's complaint pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(6) and 12(b)(f) of the Federal Rules of Civil Procedure. However, we do not consider defendants' grounds for their motion to dismiss because we find that Krain's claims are too insubstantial to support our jurisdiction over the subject matter.[1] *See Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 71 L. Ed. 2d 663 (1962). Article III of the United States Constitution gives judicial power to the federal courts in all cases arising under the Constitution and the laws of the United States. U.S. Const. art. III, § 2. However, not every case "arising under" federal law is within federal question jurisdiction. The federal claim must be a substantial one. *Bell v. Hood*, 327 U.S. 678 (1946). If the claim is "so attenuated and unsubstantial as to be absolutely void of merit," a federal court has no power to entertain the suit. *Hagans v. Lavine*, 415 U.S. 528, ____, 94 S. Ct. 1372, 39 L. Ed. 2d 577 (1974), quoting *Newburyport Water Co. v. Newburyport*,

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[1] Krain claims subject matter jurisdiction under 28 U.S.C.A. § 1332 and 28 U.S.C.A. §§ 1343(3) and 1343(4). However, his claim to diversity jurisdiction must fail, as plaintiff and defendants Albert Baskind and Herman Forman, M.D. are all residents of Illinois.

193 U.S. 561, 579, 24 S. Ct. 553, ____, 48 L. Ed. 785 (1904). The Supreme Court has repeatedly held that federal courts may dismiss claims that are "wholly insubstantial." *Bailey v. Patterson*, 369 U.S. 31, 33, 82 S. Ct. 549, 550-51, 7 L. Ed. 2d 512 (1962), or "obviously frivolous," *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288, 30 S. Ct. 326, 327 (1910). The standard for determining whether an action is frivolous, and thus subject to dismissal, is whether the action is one in which the plaintiff's realistic chances of success are slight. *Harvey v. Clay Cty. Sheriff's Dept.*, 473 F. Supp. 741 (W.D. Mo. 1979).

Defendants in this case include judicial officers who were performing judicial functions and were therefore immune from suit. Judges are not liable in civil actions for their judicial acts unless they have acted in the clear absence of all jurisdiction. *Barr v. Matteo*, 360 U.S. 564, 569 (1959) *citing to Bradley v. Fisher*, 13 Wall. 335. Judges will not be deprived of immunity because the actions they took were in error, were done maliciously, or were in excess of their authority. *John v. Barron*, 897 F.2d 1387 (7th Cir. 1990). Thus, Krain cannot present a claim against the magistrate, judges and supreme court justice named in his complaint.

Further, Krain does not make any allegations from which we can determine or infer that the alleged actions of *any* of the defendants were taken in accord with an official policy. Therefore, none of the defendants can be liable under 42 U.S.C. § 1983. *See Monell v. Department of Social Serv. of the City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). "Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss." *Lucy v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Moreover, it is impossible to determine what

constitutional rights Krain lost at the hands of defendants, or indeed under what legal theory he is proceeding at any time in his complaint. *See Kakovich v. City of Kankakee*, 130 F.R.D. 394 (1990). Krain has made no rational argument in law or fact to support his claim for relief. Consequently, we have no power to adjudicate this case.

Conclusion

For the reasons stated above, we dismiss the complaint without prejudice to Krain filing the complaint in the appropriate state court.

ENTER:

/s/ Paul E. Plunkett
United States District Judge

DATED: July 10, 1990

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

LAWRENCE S. KRAIN, M.D.

v. Case Number: 90 C 3645

RONALD GEORGE, ET AL.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the defendants Judge Laughlin Waters, Judge John G. Davies and Magistrate Ralph Geffen's to dismiss is granted on the grounds that the court lacks subject matter jurisdiction.

The court having granted defendants Ronald George and George Deukmejian's motion to dismiss for lack of personal jurisdiction on August 31, 1990, this case is dismissed in its entirety.

Date: September 13, 1990

H. STUART CUNNINGHAM
Clerk

/s/ Wanda Parker
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 3645 Date: August 31, 1990

Name of Assigned Judge or Magistrate:
Judge Leinenweber
Magistrate Bucklo

Case Title: Lawrence S. Krain v. Ronald George, Laughlin Waters, George Deukmejian, Ralph Geffen and John G. Davies

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

(a) Defendants Ronald George and George Deukmejian; (b) FRCP 12(b) motion to dismiss for lack of personal jurisdiction, improper venue, failure to state claim upon which relief can be granted; Motion pursuant to Rule 3.12 filed concurrently.

* * * * *

DOCKET ENTRY:

(1) ☐ Judgment is entered as follows:

(2) ☒ [Other docket entry:]

Defendants' Ronald George and George Deukmejian's motion to dismiss for lack of personal jurisdiction is granted.

(3) ☒ Filed motion of [use listing in "MOTION" box above].

* * * * *

☒ Docketing to mail notices.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 3645 Date: 9/13/90 @ 9:30 am

Name of Assigned Judge: Leinenweber

Case Title: Lawrence S. Krain, M.D. v. Ronald George, et al.

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and b) state briefly the nature of the motion being presented.)

Fred Foreman - U.S. Attorney

Jonathan C. Haile - Asst. U.S. Attorney

MOTION: MOTION TO DISMISS

* * * * *

DOCKET ENTRY:

(1) ☒ Judgment is entered as follows:

(2) ☐ [Other docket entry:]

Defendants Judge Laughlin Waters, Judge John G. Davies and Magistrate Ralph Geffen's motion to dismiss is granted on the grounds that this court lack personal jurisdiction.

(3) ☒ Filed motion of [use listing in "MOTION" box above.]

* * * * *

☒ Docketing to mail notices.

☒ Mail CIV-31 form.

Respectfully submitted,

LAWRENCE S. KRAIN, M.D.
5415 North Sheridan Road
Chicago, Illinois 60640
(312) 878-4676

Pro Se